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Supreme Court, U.S.
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92-1164 No. 92-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WESLEY ALAN GORDON,

Petitioner,

-vs-

THE CITY OF TULSA, OKLAHOMA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF OKLAHOMA

WESLEY ALAN GORDON
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Appearing, Pro Se

QUESTIONS PRESENTED

1. Is the Oklahoma Court of Criminal Appeals Accelerated Docket Procedure (Section XI, Rule 11.1 et seq) so restrictive that an appellant is prohibited from presenting argument in support of his propositions, and is thereby deprived of meaningful due process of law?

2. Are the due process rights of an accused violated when, at the commencement of a trial, the court allows the filing of an amended information, denies the accused's request for time to answer, and immediately requires the accused to plead?

3. Are the due process rights of an accused violated when the court grants a motion for discovery, but when the prosecution fails to comply with the granted discovery, the court reviews the request, concedes that the items are discoverable, and then proceeds with the trial over the objections of the accused?

4. Are the due process rights of an accused violated when he is convicted of speeding based on radar evidence, though the officer testifies that he improperly used the radar equipment?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

No. 92-

WESLEY ALAN GORDON,

Petitioner,

--vs--

THE CITY OF TULSA, OKLAHOMA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

Petitioner, Wesley Alan Gordon, respectfully prays that this Honorable Court issue a Writ of Certiorari, and review the judgment and order of the Oklahoma Court of Criminal Appeals. Petitioner asserts that the Oklahoma Court of Criminal Appeals has promulgated a new form of appellate procedure in misdemeanor cases, which Petitioner contends limits the scope of appellate rights. By reason of such procedures, an appellant is unable to argue his propositions, as in the normal course of

appellate process afforded appellants in other cases. As a result of the new form of appellate procedure, Petitioner contends that his propositions on appeal were overlooked by the Oklahoma Court of Criminal Appeals, resulting in the adverse judgment Petitioner seeks to overturn.

JUDGMENTS AND ORDERS BELOW

The Judgment and Sentence of the Tulsa Municipal Criminal Court of Record appears in Appendix A to this Petition. The Final Judgment of the Oklahoma Court of Criminal Appeals, entitled Accelerated Docket Order, appears in Appendix B of this Petition. The Order of the Oklahoma Court of Criminal Appeals, denying Petitioner's Application For Rehearing, appears in Appendix C of this Petition.

JURISDICTION

On June 12, 1991, Petitioner was found guilty in a non-jury trial. Said trial was held in the Tulsa Municipal Criminal Court of Record, in and for the City of Tulsa, State of Oklahoma. The Judgment and Sentence of the Tulsa Municipal Criminal Court was entered upon the record of that court on July 10, 1991, and is set forth in Appendix A. On July 19, 1991, Petitioner timely filed his Notice of Intent to Appeal the Judgment and Sentence of the municipal court. Petitioner's appeal was perfected in the Oklahoma Court of Criminal Appeals on November 14, 1991. On August 19, 1992, the Oklahoma Court of Criminal Appeals rendered Judgment in favor of the Respondent, City of Tulsa, as set forth in Appendix B. Petitioner timely filed a Petition for Rehearing in the Oklahoma Court of Criminal Appeals on September 8, 1992. The rehearing was denied on October 5, 1992, as set forth in Appendix C. The Petitioner's appellate process has been exhausted, as the Oklahoma Court of Criminal Appeals is the court of last resort. Therefore, venue and jurisdiction in this Court are properly, and timely invoked, via 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner asserts that all issues pertaining to the cause of action herein are predicated on the fundamental right of due process of law. The promulgating authority of the due process clause is set forth in Article 5 of the Constitution of the United States of America, and made applicable to the states via the 14th Amendment to the Constitution of the United States of America.

STATEMENT OF THE CASE

On October 22, 1990, Petitioner was issued a single traffic citation by a Tulsa Police Officer, alleging that Petitioner was "speeding in a school zone." The officer used "stationary radar" to detect Petitioner's alleged speed.

On November 4, 1990, Petitioner was arraigned on the charge in the Tulsa Municipal Criminal Court of Record, and was asked to enter a plea. In answer to the arraignment, Petitioner filed a written demurrer, indicating the citation, which serves as the information in Oklahoma, lacked the Constitutionally mandated sworn verification. Petitioner's demurrer to the information was denied by the trial court, and Petitioner filed a writ of prohibition/mandamus in the Oklahoma Court of Criminal Appeals. In answer to Petitioner's writ of prohibition/mandamus, the appellate court stated that the evidence in the record did not support Petitioner's contention of an improper verification, and the matter was remanded back to the trial court, and set for trial.

On June 12, 1991, at the commencement of the trial, both parties were to make their announcements. When asked if the Respondent was ready, the Respondent replied that the City of Tulsa desired to file a motion, requesting leave to file an amended information. Petitioner objected to the proposed motion, and claimed surprise. The trial court allowed the prosecution to file its amended information, and immediately ordered Petitioner to enter a plea to the amended charge. Petitioner requested additional time in which to answer or plead to the amended charge.

Petitioner was not allowed time to inspect the amended charge or to prepare his answer. Therefore, Petitioner stood mute and refused to plea without additional time in which to properly file a written demurrer to the amended charge, whereupon the court entered a plea of not guilty for the Petitioner. Petitioner was forced to proceed to trial that very instant.

Prior to trial, Petitioner filed a motion for discovery, requesting specific information relative to the radar device used by the officer in determining Petitioner's alleged speed. A hearing was conducted in the trial court, and Petitioner's discovery motion, for the most part, was granted.

On June 12, 1991, the day of the trial, Petitioner informed the trial court that the Respondent had not provided discovery at all. The trial judge forgot what he had previously ordered, and commenced another hearing on Petitioner's discovery motion, previously granted by the trial court. The trial court noted the fact that Petitioner was never provided discovery with respect to radar equipment. Nonetheless, the trial court determined to overrule Petitioner's discovery requests. Respondent conducted the trial without establishing the evidence necessary to sustain the accuracy of the radar device, i.e., presentation of the Certification of Calibration with respect to a) the radar device itself, and b) the tuning fork used by the officer to externally check the calibration of the radar device.

During direct examination, Petitioner demonstrated to the trial court that the officer did not properly use the radar testing equipment, i.e., the tuning fork.

On appeal, Petitioner attempted to assert all of the errors at the trial court level mentioned above, and in his Brief in Chief, Petitioner demonstrated, by reference to the record, exactly where such errors were found. However, the Petitioner was instructed by the Clerk of the appellate court that he could not file his appeal in argument form, as in normal appellate proceedings. Petitioner was informed that there was a new form of appeal, adopted in 1990 by the Oklahoma Court of Criminal Appeals, called the Fast

Track Docket Procedure, Rule 11.2 (a) (3), 22 O.S.Supp.1990, Ch.18, Appeal. This form of appellate procedure does not allow arguments on appeal. The Clerk instructed Petitioner to file a motion in the appellate court, indicating his objection to the Fast Track Procedure. Petitioner filed is objection to the new format, claiming that it was unconstitutional. The appellate court rejected Petitioner's request to file his appeal in argument form, returned it, and ordered the Petitioner to file his appeal in the new format. Appellant filed his appeal as requested, and as the limited form is much more restrictive than the normal course of appeal briefing, Appellant was unable to articulate his propositions of error for consideration by the appellate court.

Petitioner's appeal ultimately culminated in an oral argument at the appellant court, in which case two of the five justices agreed with Petitioner. Petitioner filed an application for rehearing, which the appellate court denied. No opinion was proffered in this case by either the trial court or the appellate court.

REASONS FOR GRANTING THE WRIT

Petitioner respectfully suggests that this Court should grant Certiorari for the following reasons:

ARGUMENT I.

IS THE OKLAHOMA APPELLATE PROCEDURE UNDULY RESTRICTIVE, WITH RESPECT TO MISDEMEANOR CASES?

The appellate procedure, with respect to misdemeanor criminal appeals, is so restrictive that an appellant cannot present his arguments. Indeed no arguments are allowed. Therefore, the issues on appeal cannot be articulated and briefed with specificity, leaving the appellant without meaningful due process with respect to the fundamental and Constitutional right to Petition his government for redress of grievances; and the Judgment and

Sentence rendered in the case should have been resolved in Petitioner's favor due to existing state statutory law.

ARGUMENT II.

IF UPON COMMENCEMENT OF A CRIMINAL TRIAL THE PROSECUTION SEEKS TO AMEND ITS INFORMATION, AND THE ACCUSED CLAIMS SURPRISE, SHOULD THE ACCUSED BE ALLOWED TIME IN WHICH TO PREPAREAN ANSWER TO THE AMENDED INFORMATION?

The trial court should have granted the continuance requested by Petitioner, in order to allow him opportunity to prepare an answer to the amended information. Appellant submits to this Honorable Court, that when he was made to plead to the amended charge, the trial court, in effect, re-arraigned him.

The traffic ticket, which served as the information in the first instance, after amendment, became no part of the charge in the amended information.

Petitioner would invite this Court's attention to the statutory provisions regarding pleading. In Oklahoma, when one accused of a crime is arraigned on a criminal charge, he must answer the information by either a motion to set aside or demurrer, or by pleading guilty or not guilty thereto. Title 22 O.S. Sections 492.

> **Section 492. Pleading to indictment or information**
>
> **If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such other time as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment or information or may demur or plead thereto.**

On November 4, 1990, at the initial arraignment, Petitioner answered the arraignment by filing his written demurrer,claiming the information was unverified.

On June 12, 1991, being the commencement of the trial, the Respondent requested leave to file an amended information. The trial court allowed Respondent's amended information to be filed, and ordered Petitioner to enter another plea.

Petitioner asserts that the reason for the Respondent's amendment was obviously due to the fact that Petitioner was going to prove at trial that the verification of the information was never correctly made. To prove subject matter jurisdiction was not invoked by an improperly filed complaint, Petitioner had subpoenaed the issuing officer, as well as the purported attesting officer. The attesting officer's signature line indicates upon the citation that the issuing officer appeared before him, and that the issuing officer verified his complaint, which Oklahoma law mandates. This purported procedure was the subject of Petitioner's demurrer and subsequent writ of prohibition/mandamus to the appellate court.

Petitioner sought to establish evidence on the record, that the verification never took place, and that the proceedings were illegal. The Respondent's amended information was designed to take the heat off of the initial information, with respect to the verification, and thereby avert the damaging testimony of the issuing officer and the attesting officer. Indeed, the attesting officer, whom Petitioner had duly subpoenaed to trial that day, failed to show up at all, and this fact was wholly ignored by the trial court and the appellate court. Additionally, whenever Petitioner attempted to solicit questions of the issuing officer, with respect to the verification portion of the complaint, Petitioner's attorney was instructed that he could not ask such questions. The trial court stated that the initial information was no longer a factor, since the court allowed the Respondent to file an amended information. Therefore, it is Petitioner's contention that, according to the form of the statutes, the trial court, on its own motion, actually arrested

the judgment on the initial information previously filed (Title 22, O.S. Section 955):

Section 955. Court may arrest on its own motion-Effect of allowing motion

> **The court may also on its own view of any of these defects, arrest the judgment without motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment or information was filed, and in no case of arrest of judgment is the verdict a bar to another prosecution.**

Additionally, grounds for an arrest of judgment may be made where it appears that the defects of an information alleged in a demurrer are apparent. *State v. Cox*, Okl.Cr. 575 P.2d 121 (1978). And, since the Petitioner raised questions concerning the sufficiency of the information, before it was amended, it is quite probable that the trial court's requirement that Petitioner plead to the amended information, is further indication that the motion was an arrest of judgment, on its own motion. *Douglas v. State*, 93 Okl.Cr. 132, 225 P.2d 376 (1950); *Feige v. State*, 11 Okl.Cr. 49, 142 P. 1044 (1914); *State v. Harmon*, 3 Okl.Cr. 68, 104 P. 370 (1909). Petitioner asserts that if the trial court's order, requiring Petitioner to plead to the amended information, was tantamount to an arrest of judgment on the former information, or if the trial court's order was merely an exercise of some other requirement of law, the Petitioner was still entitled to additional time in which to answer or plead. The Oklahoma Court of Criminal Appeals should have sustained Petitioner's claim that he was entitled to additional time in which to answer the amended charge, because that court had previously stated that the filing of an amended information is the beginning of a new cause, and hence the accused is always entitled to statutory time in which to plead. *Trent v. State*, 91 P.2d 790 (Okl.Cr. 1939); *Scott v. State*, 186 P.2d

336(Okl.Cr.1947). Petitioner could not interpose a motion to set aside information, motion to quash, or demurrer, without statutory time in which to do so. The statutes set forth the proper procedure concerning a defendant's pleading to a charge:

> **Title 22, O.S. Section 502. Defendant's Pleading**
>
> **The only pleading on the part of the defendant is either a demurrer or a plea.**

Title 22, O.S. Sections 503 and 505, state:

> **Section 503. Defendant to plea in open court**
>
> **Both the demurrer and the plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.**

Section 505. Demurrer to indictment or information requisites of

> **The demurrer must be in writing, signed by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the indictment or information, or it must be disregarded.**

Obviously, Petitioner could not find time to demur to the amended information while attempting to defend himself at trial that very moment. Moreover, Petitioner was not allowed time in which to compel witnesses. Petitioner would have liked to have subpoenaed Glenda Howard. Ms. Howard was allegedly the

attesting officer who signed the jurat on the amended information. Petitioner would have liked to have tested the sufficiency of the verification, even on amendment, which he certainly had a right to do. Additionally, after careful examination of the amended information, had Appellant been afforded additional time, the appellant would have certainly filed another demurrer to the amended information, for other and obvious errors appearing in the amended complaint. Failure to grant Petitioner time to answer the amended information was nothing less than a trial by ambush. Petitioner asserts that this action is unconstitutional, violating the due process clause of the Constitution of the United States of America.

The trial court's decision to allow the original information to be amended is significant. The amendment process raises questions which have not been addressed by the Oklahoma Court of Criminal Appeals, and which it failed to address in Petitioner's appeal. Petitioner asserts that these questions deserve attention, since other jurisdictions have addressed them. For instance, did the amended information constitute a new information? *Conery v. Baltimore & O.R. Co.* 195 F.2d 120 (1951); *Watson v. Cannon Shoe Co.*, 165 F.2d 311 (1948). In the case of *State v. Jansen*, 207 Minn. 250, 290 N.W. 557 (1940), the court there noted that the statute authorizing amendments as to both substance and form, requires that a defendant be allowed reasonable time to prepare his defense. See also *State v. Heffelinger*, 197 Minn. 173, 266 N.W. 751 (1936). And, where an amendment causes genuine surprise, the case should be continued to afford an opportunity to adequately prepare a new defense. *Commonwealth v. Souder*, 1765 Pa.Super. 523, 108 A.2d 831 (1954).

Petitioner asserts that the substance of the amended information was significantly different from that of the original information. And, where every fact necessary to be proven to make the act complained of a crime, such statements are a matter of substance. *Lank v. State*, 149 A.2d 367 (1959). The Oklahoma Court of Criminal Appeals has stated in *Roberson v. State*, 362

P.2d 1115 (Okl.Cr.1961), that an amendment as to matters of substance cannot be authorized, either by the trial court, or the legislation, and such amendments are unconstitutional. In *Roberson*, supra, the appellate court held that:

> **. . . it is established law that the caption to the indictment does not control in determining the nature of the offense allegedly charged, but the words stated in the body of the indictment must be considered in the light in which they are used to determine whether they charge an offense.**

Id at page 1117 [3], quoting from previous holdings in *Shiever v. State*, 222 P.2d 530 (Okl.Cr.); *Wilson v. State*, 209 P.2d 512 (Okl.Cr.); *Bristow v. State*, 189 P.2d 629 (Okl.Cr.) and *Husley v. State*, 192 P.2d 301 (Okl.Cr.).

In *Ex parte Bain*, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed 849, this Court noted that, where amendments are in matters of form, to correct irregularities, such amendments are permissible, but as to matters of substance, amendments are not permitted. In *Roberson*, supra, it was noted that amendments, as to substance, would materially prejudice the substantial rights of the defendant. *Id* at page 1118. How is it than, that Petitioner's rights were so briskly ignored, in light of the above quoted cases? This conflict is deserving of this Court's consideration.

ARGUMENT III.

SHOULD THE RESPONDENT HAVE PROVIDED PETITIONER DISCOVERY, WITH RESPECT TO THE RADAR DEVICE

The Petitioner asserts that the responsibility of the prosecution, in discovery, is to share with the defense material it has access to, and which is beyond the reach of the defendant. *Allen*

v. District Court of Washington County, et. al., 62 O.B.J. 69 (Jan. 5, 1991). With this power comes the prosecution's responsibility to use such information fairly. *U.S. v. Abello-Silva*, 948 F.2d 1168 (1991).

Justice Marshal stated in *Wardius v. Oregon*, 412 U.S. 470:

> **We do hold that in the absence of a strong showing of state interest to the contrary,**
>
> **discovery is a two way street.**

In the case herein, the Respondent relied upon the testimony of the officer pertaining to his use of radar equipment. The officer's testimony concerning his use of radar equipment was based, in part, upon his notes of the incident, and upon his equipment having been previously checked, tested, repaired, and logged in his radar log book. This information (the log book), was denied to Petitioner, but was within the reach of the prosecution. This tactic of the Respondent suppressing evidence is evidence of "bad faith." "Bad Faith" is determined when the reasonable probability that discovery would affect the proceedings is evident. *Brady v. Maryland*, 83 U.S. 373 (1963). This Court in Brady stated:

> **. . . suppression by the prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution.**

Id, at page 87.

Indeed, this Court asserted in *Brady*, supra, that the principal advanced in the case of *Mooney v. Holohan*, 294 U.S. 103 (1935):

> **. . . is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only**

when the guilty are convicted but when criminal trials are fair; our system of administration of justice suffers when any accused is treated unfairly.

Id, at page 87.

The fact that the issuing officer's radar device had been turned in at least once since assigned to the officer, raises a reasonable probability of bad faith on the part of the prosecution, for failing to supply the radar log book. Therefore, confidence in the outcome was sufficiently undermined.

ARGUMENT IV.

SHOULD A PERSON, CHARGED WITH SPEEDING, BE ACQUITTED OF THE CHARGE IF IT IS DEMONSTRATED AT TRIAL, AND ON APPEAL, THAT THE OFFICER USED EQUIPMENT IMPROPERLY?

The Respondent failed to present sufficient proof at trial to substantiate a conviction of speeding by use of radar.

Petitioner is fully aware that because of the strength of the scientific principals on which the radar unit is based (the Doppler Effect), every recent court case which has dealt with the question has taken judicial notice of the scientific reliability of speedometers as recorders of speed. Yet, these same courts have consistently held that evidence of the accuracy of a particular radar unit is necessary to sustain a conviction for speeding, obtained solely by radar. *State v. Primm*, 606 P.2d 112 (Kan.1980). The Respondent attempted to establish the alleged speed of Petitioner by the visual estimate the officer claimed he made. However, the appellate court noted at the oral argument, estimating speed based on visual observation is impossible, because in the words of Judge Lumpkin, "How do you calibrate eyeballs?" At best, the visual

estimate of the officer is meant to be corroborative testimony, it is not evidence. Therefore, the Respondent would have had to introduce the evidence indicating the reliability of the radar device and testing equipment during the course of the trial. In order to produce evidence of the accuracy of the radar device, as well as the testing equipment used to check the calibration of the device, the Respondent would have to produce the Certification of Calibration from the manufacturer of the radar device, showing that the device and testing equipment have been duly certified.

The fact that no court in the nation has determined whether an officer's proficiency in the use of his radar equipment will justify a conviction, is significant grounds for consideration by this Court for the issuance of a Writ of Certiorari; especially when it was established by the Petitioner at trial that the officer used techniques in operating radar equipment, not authorized by the manufacturer. Petitioner asserted in his appeal that the officer's testimony, as to his use of radar equipment, would not support a finding of guilt. Somehow, this issue seems to have been overlooked, or at least un-addressed.

Corroborative evidence as to the accuracy of a particular radar unit can be established by showing that the operator tested the device in accordance with accepted procedures to determine that the unit was functioning properly. *State v. Spence*, 418 So.2d 583, 588 (La.1982); *Commonwealth v. Whynaught*, 384 N.E.2d 1212 (Mass. 1979). The court in *Whynaught*, at page 1216 said:

> **We assume that judges will closely examine the nature of all testing procedures and that they will be guided in their admission decisions by the *quality* of the tests performed, rather than by their *quantity*.**
>
> [emphasis added].

Citing *People v. Perlman*, 392 N.Y.S.2d 985.

The *Whynaught* court upheld the lower court's finding of

guilt, albeit reluctantly. The court stated that the accused had not raised the issue of the testing habits of officers using radar, and apparently remained unchallenged. *Id*, at page 1216. In the case at bar, Petitioner did raise the issue of the testing habits of the officer.

In *City of Seattle v. Peterson*, 693 P.2d 757 (Wash.App.1985), at page 758, that court noted that:

> **The issue here is not the reliability of a scientific principal (the Doppler Effect), but whether the particular machine employing the principal is so designed and constructed that the results produced *by proper operation* are reliable.** [emphasis added].

See also: *People v. Donohoo*, 369 N.E.2d 546 (Ill.1977); *People v. Cash*, 242 N.E.2d 765 (Ill.1968); *People v. Abdallah*, 226 N.E.2d 408 Ill.1967). All of which stress the proper operation of a particular device.

In the case of *Commonwealth v. DePasquale*, 476 A.2d 419 (Pa.Super.1984), the court correctly noted that, "Radar contains dangers of inaccuracy if not carefully used." *Id*, at page 420. Petitioner asserts that just such inaccuracies are best noted after improper use of equipment is established. Petitioner demonstrated at the trial level, as well as on appeal, that the officer used improper techniques with respect to the use of testing devices. For instance, the officer admitted to rapping his tuning fork on the chrome-plated steel handlebars of his motorcycle. An example of the proper use of tuning forks was noted in *State v. Overton*, 343 A.2d 516 (N.J.Super.1975). The court there noted that the forks were, "struck upon a wooden mallet", which in turn emitted a tone consistent with the manufacturer's instructions. In Petitioner's defense, he submitted a training manual, called "Radio, Ranging And Detection." The manual is published by the United States Department of Transportation, and has been adopted by the Oklahoma Department of Public Safety, and the state agency in

Oklahoma which accredits police academies. This radar training manual is used to train officers in Oklahoma on the use of radar. The manual clearly warns the user to "*NEVER* strike the fork against a surface harder than its own surface, like another metal object." Petitioner asserted at the trial level, and on appeal, that "steel handlebars" are just such an object to be avoided. Moreover, the manufacturer of the radar device used by the officer in this case, does not recommend rapping the tines of the tuning fork on steel.

In the case of *State v. Readding*, 389 A.2d 512 (N.J.Cr.App.1978), the court set forth four (4) rules in establishing admissibility of radar evidence:

1. The device is scientifically reliable;

Refers to the Doppler Effect, which the courts have ruled is a scientific theory for which no controversy remains, and for which judicial notice may be taken.

2. The particular speedometer used in the case being tried is accurate;

Requires that the prosecution present evidence that the particular radar device has been calibrated and certified by the manufacturer within the last two (2) years. In the case herein, this evidence was never presented to the trial court.

3. The operator was qualified;

That the user has passed a standardized test in the operation and use of radar equipment.

4. The device was operated properly in the case being tried.

Includes a demonstration by the user that his use of the radar equipment meets the standard approved by the manufacturer.

The court in *Readding*, went on to state that:

> **The proper operation of the device must be proved, usually by detailed reference by the qualified operator to the procedure called for by the manufacturer of the particular device.**

Id, at page 515.

Petitioner asserts that not one of these rules was proved and supported by evidence at trial. Neither the trial court or the appellate court filed an opinion addressing the issues. Petitioner asserts that the lack of an opinion is a violation of his rights to fair resolution of the issues, when so much authority exists in favor of Petitioner.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the judgment of the Oklahoma Court of Criminal Appeals.

Respectfully submitted,

/s/

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APPENDIX

APPENDIX A-1

IN THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF OKLAHOMA

WESLEY ALAN GORDON,

Appellant,

-vs- Case No. M-91-1051

THE CITY OF TULSA,

Appellee.

ACCELERATED DOCKET ORDER

On June 12, 1991, appellant was found guilty in a non-jury trial held in the Municipal Court of the City of Tulsa, Case No. 9675194, for speeding in a school zone. As a result, appellant was fined sixty dollars ($60.00), ordered to pay one hundred and fifty dollars ($150.00) in court costs and sentenced to three (3) days imprisonment in the Tulsa County jail. From this judgment and sentence, appellant perfected his appeal.

Pursuant to the Rules of the Oklahoma Court of Criminal Appeals, Rule 11.2(a)(3), 22 O.S.Supp. 1990, Ch.18, App., this appeal was automatically assigned to this Court's Accelerated Docket. In his application, appellant raised four propositions of error: 1) The trial court lacked subject matter jurisdiction because the complaint was not properly verified; 2) The trial court erred in allowing the amended information in that the amended information prejudiced appellant's rights; 3) The trial court erred in admitting the results of the radar detector in that the radar detector's reliability was not properly demonstrated prior to its admission; and 4) The trial court erred in disallowing appellant's discovery request. Pursuant to Rule 11.5(c), appellant, appearing

pro se, presented these propositions to this Court in oral argument on August 6, 1992. At the conclusion of the hearing, this Court ruled in a three (3) to two (2) decision to **AFFIRM** the conviction but to eliminate the jail sentence finding that such a sentence shocked the conscience of this Court. The trial court's decision is hereby **AFFIRMED as MODIFIED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 18th day of August, 1992.

JAMES F. LANE, Presiding Judge

GARY L. LUMPKIN, Vice Presiding Judge

TOM BRETT, Judge (DISSENTS)

ED PARKS, Judge

CHARLES A. JOHNSON, Judge

APPENDIX B-1

FIFTH AMENDMENT

No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ;nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisidction the equal protection of the laws.